79-1284

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1979.

No. 79-1207

THOMAS E. KNEELAND, JR.
Petitioner-Defendant / Appellant
v.

NEW ENGLAND MERCHANTS NATIONAL BANK
EVANS PRODUCTS COMPANY, ET AL.,
Plaintiffs-Appellees

Defendant-Appellant's Appeal to the United States Supreme Court. JURISDICTIONAL STATEMENT PETITION FOR A WRIT OF CERTIORARI

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IN THE

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THOMAS E. KNEELAND, JR.

Petitioner-Defendant/Appellant

v.

NEW ENGLAND MERCHANTS NATIONAL BANK,
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PETITION FOR A WRIT OF CERTIORARI

Defendant-Appellant's Appeal to the United States Supreme Court. JURISDICTIONAL STATEMENT

Opinion Below.

The Opinion of the Court below, First Circuit Court of Appeals, is an unpublished decision. Copy is appended hereto.

Appendix A.

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Jurisdiction.

The decision of the Court below was entered on September 5, 1979. The jurisdiction of the Court is invoked under Article 1, Section (8) of the Constitution of the United States, wherein it is provided that the Congress shall have power to establish uniform Laws on the subject of Bankruptcy throughout the United States.

Jurisdiction is further asserted under U.S.C.A. Title 28, Section 1253 and Section 1254 (1) (2).

Questions Presented.

I. Whether the decision of the First Circuit Court of Appeals affirming the Order of the District Court Judge, which allowed an Order of the Bankruptcy Court Judge, entering a default judgment against the Appellant for failure to answer interrogatories under Rule 737, when no subsequent hearing was held in the Bankruptcy

Court, violated the Defendant's right to due process. Jurisdiction of the Court is invoked under 11 U.S.C. of the Bankruptcy Act.

II. Whether the First Circuit Court of Appeals applied the correct Federal standard in affirming the sanction of a default judgment under Rule 737 of the Bankruptcy Act in contradiction to the Circuit Court of Appeals of the Ninth Circuit, which Court has held that an alleged bankrupt, prior to adjudication on an involuntary petition, must be afforded a hearing prior to the entry of a default judgment in the event he has allegedly violated a Court order relating to discovery. The First Circuit and the Ninth Circuit Courts of Appeal decisions are in conflict.

Constitutional Provisions Involved.

Article 1, Section 8.

The Congress shall have power to establish uniform Laws on the subject of Bankruptcies throughout the United States.

Fifth Amendment.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Statement of the Case.

The Defendant/Appellant was adjudged a bankrupt in an involuntary petition in bankruptcy by the Bankruptcy Court Judge on January 28, 1977, although no hearing was held pursuant to the Appellee's request that a default judgment be entered under Bankruptcy Rule 737.

The Defendant/Appellant was afforded no opportunity to present countervailing facts and was denied due process of law by the Bankruptcy Court Judge in being ordered to file a schedule of statements of assets and liabilities, in direct violation of 11 U.S.C. Section 21 (d).

The Defendant/Appellant attempted to comply with the Bankruptcy Court's order to file a schedule of assets and liabilities, and, notwithstanding his attempt to comply, he was summarily adjudged bankrupt by default as a sanction applied under the provision of Bankruptcy Rule 737, notwithstanding the fact that 11 U.S.C. Section 21 (d)

provides that "it is improper for a Court to require an alleged bankrupt, prior to adjudication on an involuntary petition to prepare schedules of assets and liabilities or statements of affairs."

The Defendant appealed seasonably the entering of the judgment of bankruptcy by default to the United States District Court of Massachusetts, and after hearing, the decision of the Bankruptcy Court Judge was affirmed by the District Court Judge.

The Defendant appealed the decision of the District Court Judge to the First Circuit Court of Appeals, three judges sitting, and said decision of the District Court judge was affirmed by the First Circuit Court of Appeals.

From the decision of the three-judge First Circuit Court of Appeals, the Defendant/Appellant has appealed directly to the United States Supreme Court for the reason specifically that, in the decision of the First Circuit Court

of Appeals, decision by Judge Bownes determined that, in fact, no hearing was held in this involuntary proceeding in bankruptcy, prior to adjudication after a finding that the Defendant allegedly violated the Order to provide the Bankruptcy Court Judge with a schedule of assets and liabilities or a statement of affairs. The Defendant on October 4, 1979, filed a notice of appeal with the Clerk of the First Circuit Court of Appeals.

See copy of Notice of Appeal appended, Appendix B.

It is further asserted by the Defendant/Appellant that he was denied due process of law for failure of the Bankruptcy Court Judge to hold a hearing prior to entering any Order of Default Judgment, as the Defendant will lose his property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

It is further an assertion of the Defendant/Appellant that the First Circuit Court of Appeals' decision in this case is in direct contradiction to the Ninth Circuit Court of Appeals of California's holding in the case of Berg v. Hoppe, decided on November 3, 1965, and reported at 352 F2d 776.

Statement of the Facts.

The Bankruptcy Judge, following an evidentiary hearing on the Plaintiff/Appellee's Motion to enter default judgment against the Defendant for failure to answer interrogatories, ordered the Defendant to file a statement of assets and liabilities with the Bankruptcy Court before the end of 1976.

The Defendant prepared a financial statement with the assistance of his accountant and signed same and submitted it to the Bankruptcy Court Judge on December 28, 1976, within the time frame provided.

It was subsequently indicated to the Defendant that he had failed to sign the financial statement under the pains and penalties of perjury. Upon noting the omission, he re-signed the financial statement which had been filed with the Bankruptcy Court Judge on December 28, 1976, the first week of January, 1977.

The Defendant was never put aware of any other hearing and was afforded no further notice or opportunity to be heard before the Bankruptcy Judge on the questions of his compliance with Rule 737. On the contrary, the Defendant was informed that a hearing was to be held in chambers with the Bankruptcy Judge, but the Defendant was specifically informed not to appear at the hearing as his case was only going to be reviewed by Plaintiff's counsel with the Bankruptcy Judge and his presence (the Defendant's) was not required, and he was told not to bother to attend the meeting on January 10, 1977.

Following advice of the Bankruptcy Judge's secretary, the Defendant did not attend the meeting held in chambers with the Bankruptcy Judge, and on January 28, 1977, he was summarily adjudged a bankrupt by default for failing to comply with a Rule 737 Order.

The Defendant raised the issue of failure to have a hearing after the alleged violation of a 737 Order with the District Court Judge upon appeal.

The District Court Judge's decision affirmed the Bankruptcy Court Judge's decision and made no mention of the requirement of a hearing as provided at 11 U.S.C. 21 (d).

Further, the Defendant pointed out to the District Court Judge and to the First Circuit Court of Appeals that the following cases all required a hearing, notice and proscribed the issuance of the type of order that the Bankruptcy Court Judge had directed at the Defendant, namely,

the cases of Young & H. Co. v. Brande Bros. (CA 1) 162 F 663, Re Robert T. Cochran & Co. (DC NY) 44 F2d 417, and Berg v. Hoppe, 352 F2d 776.

All of these cases and the requirements were pointed out to the First Circuit Court of Appeals and they entered a decision affirming the District Court Judge's actions, affirming the Bankruptcy Court Judge's actions, and in their decision, they specifically determined that in fact no hearing was held to afford the Defendant an opportunity to be heard which, as the Defendant alleges, denied him due process under the Fifth Amendment to the United States Constitution, and further, the Defendant asserts that this warrants direct review by the United States Supreme Court, because the First Circuit Court of Appeals and the Ninth Circuit Court of Appeals are in direct conflict as to the interpretation of 11 U.S.C. 21 (d) as to the requirements as to whether or not

a defendant in an involuntary petition of bankruptcy is entitled to a hearing after the alleged violation of a Rule 737 Order, prior to the entry of the sanction of a default judgment.

Conclusion.

The Defendant further asserts that he has been denied due process of law because he was not afforded a fair trial with the opportunity to be heard after December 10, 1976, and as such said denial violated the fundamental concept embodied in the United States Constitution, in the Fifth Amendment, particularly in light of the fact that said opportunity to be heard is in fact provided in 11 U.S.C. 21 (d).

See Frank v. Magnum, 237 U.S. 309 at 347 (1915)

See Moore v. Dempsey, 261 U.S. 86 43 Supreme Court 265, 67 law ed. 543 (1923).

WHEREFORE, the Defendant/Appellant respectfully requests that his appeal be docketed, and the Court order a plenary appeal before the Court, together with briefs and oral argument to be permitted the Defendant/Appellant.

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 79-1207

THOMAS E. KNEELAND, JR.
Appellant,

v.

NEW ENGLAND MERCHANTS NATIONAL BANK, ET AL.,
Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

(Hon. W. Arthur Garrity, Jr., U. S. District Judge)

Before Coffin, Chief Judge,
Campbell and Bownes, Circuit Judges.

Thomas E. Kneeland, Jr. on brief pro se.
Mary Allen Wilkes, James C. Donnelly, Jr. and Hale and Dorr on brief for appellees.

September 5, 1979

BOWNES, Circuit Judge. This appeal is from the district court's order affirming the bankruptcy court's order adjudicating appellant bankrupt by default.

Appellant claims that the bankruptcy court erred in entering default judgment against him because (1) he attended all the hearings he was supposed to and (2) even assuming that his statement of assets and liabilities did not meet the bankruptcy court's standards, the court had no right to order him to file such a statement prior to his adjudication as a bankrupt. We need not reach the issue whether the bankruptcy court had power to order appellant to file a statement of assets and liabilities because there is sufficient evidence to support the entry of a default judgment even without considering the adequacy of the statement. In fact the bankruptcy court's decision to enter a default judgment was based only to a minor extent on appellant's failure to file a proper statement of assets and liabilities.

The fact that appellant attended many of the hearings he was required to attend does not constitute grounds for reversing the bankruptcy court's order. The default judgment was based on the appellant's continuing and unjustified refu - sal over a period of six months to provide correct information in response to interrogatories and at evidentiary hearings. Appellant does not contest the bankruptcy court's findings of fact with respect to these matters and they provide a sufficient basis for the default judgment. Bankruptcy Rules 121, 1737; Fed R. Civ. P. 37 (b) (2)(C).

Appellant's next claim is that his right to due process was violated because he was kept from attending a hearing on January 10, 1977 concerning his statement of assets and liabilities. The short answer to this claim is that there was no such hearing.

Appellant's other claims are not developed to any significant extent and are similarly without merit.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

#79-1207

THOMAS E. KNEELAND, JR.
APPELLANT

v.

NEW ENGLAND MERCHANTS
NATIONAL BANK, ET ALS.,
APPELLEE

NOTICE OF APPEAL

FROM THE FIRST CIRCUIT COURT OF
APPEALS.

And now comes the Appellant, Thomas E. Kneeland, Jr., and appeals from the judgment entered September 5, 1979, by the First Circuit Court of Appeals, appealing the decision affirming the adjudication of the District Court and the Bankruptcy Court adjudicating the Appellant bankrupt by default, to the United States Supreme Court. The Appellee in this appeal is New England Merchants National Bank et als.

This appeal is taken under Rule 10 of the

United States Supreme Court and under Sections 1253 and 1254, Sec. (1), of Title 28 of the United States Code Annotated.

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